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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE BETH LABSON FREEMAN

TEVRA BRANDS, LLC,	)	
	)	
PLAINTIFF,	)	
	)	
VS.	)	NO. 19-CV-04312-BLF
	)	
BAYER HEALTHCARE LLC, AND	)	
BAYER ANIMAL HEALTH GMBH, AND	)	
BAYER AG,	)	SAN JOSE, CALIFORNIA
	)	
DEFENDANTS.	)	TUESDAY
	)	DECEMBER 10, 2019
	)	

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**TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND**

**RECORDING 1:41 P.M. - 2:13 P.M.**

**APPEARANCES:**

**FOR PLAINTIFF**

POLSINELLI, PC  
900 W. 48TH PLACE, SUITE 900  
KANSAS CITY, MISSOURI 64112

**BY: DANIEL D. OWEN, ESQUIRE**

POLSINELLI PC  
1401 EYE STREET NW, SUITE 800  
WASHINGTON, DC 20005

**BY: ALEXA R. DICUNZOLO, ESQUIRE**

**FOR DEFENDANTS**

ARNOLD & PORTER KAYE SCHOLER LLP  
THREE EMBARCADERO CENTER, 10TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

**BY: DANIEL B. ASIMOW, ESQUIRE**

**TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR  
RETIRED OFFICIAL COURT REPORTER, USDC**

1 TUESDAY, DECEMBER 11, 2019

1:41 P.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO  
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER  
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

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6 ELECTRONIC PROCEEDINGS

7 **THE CLERK:** CALLING CASE 19-4312, TEVRA BRANDS VERSUS  
8 BAYER HEALTHCARE, ET AL.

9 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE  
10 RECORD.

11 **MR. ASIMOW:** GOOD AFTERNOON, YOUR HONOR. DANIEL  
12 ASIMOW FOR DEFENDANT BAYER HEALTHCARE, LLC.

13 **MR. OWEN:** GOOD AFTERNOON, YOUR HONOR. DAN OWEN OF  
14 THE POLSINELLI FIRM, THE KANSAS CITY OFFICE. I'M ASSISTED  
15 TODAY BY ALEXA DICUNZOLO FROM OUR WASHINGTON D.C. OFFICE.

16 **THE COURT:** OH, WELL, THANK YOU BOTH FOR TRAVELING.  
17 I HOPE YOU DIDN'T HAVE ANY DIFFICULTY.

18 **MR. OWEN:** NO, NO. THE WEATHER WAS FINE --

19 **THE COURT:** GOOD.

20 **MR. OWEN:** AND WE'VE OBVIOUSLY NOT BEEN BEFORE YOUR  
21 HONOR BEFORE.

22 **THE COURT:** THAT'S RIGHT.

23 **MR. OWEN:** AND ALTHOUGH THE COURT WAS KIND ENOUGH TO  
24 ALLOW US TO PROCEED TELEPHONICALLY, WE THOUGHT WE OUGHT TO COME  
25 OUT AND FIND OUR WAY TO SAN JOSE.

1           **THE COURT:** WELL, THANK YOU. I DO APPRECIATE THAT.  
2 SINCE THE WEATHER COOPERATED, YOU'LL BE -- YOU WON'T BE  
3 RELUCTANT TO COME BACK.

4           ALL RIGHT. THIS IS OUR INITIAL CASE MANAGEMENT  
5 CONFERENCE. I CERTAINLY RECOGNIZE THAT IN FEBRUARY WE HAVE A  
6 MOTION TO DISMISS PENDING, BUT I THINK IT PROBABLY IS A GOOD  
7 IDEA TO SEE WHERE WE'RE GOING IN THE CASE AND TRY TO BRING SOME  
8 ORDER TO IT.

9           I KNOW THAT THERE'S A REQUEST FOR A DISCOVERY STAY  
10 PENDING THE MOTION TO DISMISS. WE CAN CHAT ABOUT THAT.

11           BUT I WAS FIRST INTERESTED IN THE STATUS OF SERVICE  
12 OF THE DEFENDANTS WHO ARE NOT LOCATED IN THE UNITED STATES.  
13 AND, MR. ASIMOW, YOU MAY HAVE SUGGESTED IN THE STATEMENT THAT  
14 THERE'S SOME DISCUSSION ABOUT WHETHER THOSE PARTIES WILL REMAIN  
15 PARTIES IN THE CASE.

16           SO, MR. OWEN, WHAT CAN YOU TELL ME ABOUT THAT?

17           **MR. OWEN:** YOUR HONOR, WE'VE INITIATED PROCEEDINGS TO  
18 HAVE THEM SERVED. THE PLEADINGS WERE TRANSLATED.

19           **THE COURT:** OH, GOSH.

20           **MR. OWEN:** TRANSMITTED TO THE CENTRAL AUTHORITY IN  
21 GERMANY, WHICH TURNS OUT TO BE A NIGHTMARE.

22           **THE COURT:** YEP.

23           **MR. OWEN:** THERE WAS SOMETHING WRONG ON THE COVER  
24 SHEET. WE HAD TO SEND THE STUFF AGAIN AND WHEREIN PROBABLY WAS  
25 A FOUR TO FIVE-MONTH PROCESS THAT BEGAN IN SEPTEMBER.

1           **THE COURT:**   OKAY.

2           **MR. OWEN:**   WE HAVE NO DESIRE TO HAVE EXTRANEOUS  
3 PARTIES IN THIS CASE AS LONG AS TWO THINGS ARE SATISFIED. ONE,  
4 THAT WE CAN GET DISCOVERY WE NEED, SOME OF WHICH MAY COME FROM  
5 GERMANY.

6           **THE COURT:**   SURE.

7           **MR. OWEN:**   SPECIFICALLY FROM A COMPANY CALLED BAYER  
8 ANIMAL HEALTH. THAT'S A GERMAN COMPANY THAT APPARENTLY OWNS  
9 SOME OF THE INTELLECTUAL PROPERTY AND SOMEHOW GUIDES THE ANIMAL  
10 HEALTH OPERATIONS IN THIS COUNTRY, EVEN THOUGH THE DOMESTIC  
11 DEFENDANT IS CALLED BAYER HEALTHCARE; IT'S A NEW JERSEY, LLC.

12                       SO WE HAVE NO DESIRE TO HAVE EXTRANEOUS PARTIES, BUT  
13 WE'VE GOT TO MAKE SURE WE GET DISCOVERY WE NEED AND WE ALSO  
14 NEED TO MAKE SURE THAT ANY JUDGMENT RENDERED COULD BE  
15 SATISFIED.

16                       NOW, AM I CRAZY FOR SAYING THAT? WE'RE TALKING ABOUT  
17 BAYER HERE. IT'S A 35 BILLION DOLLAR OR 45 BILLION DOLLAR  
18 COMPANY, NATION -- WORLDWIDE, 90 COUNTRIES. WHY WOULD I BE  
19 SATISFYING A JUDGMENT? BECAUSE THE DEFENDANT, THE DOMESTIC  
20 DEFENDANT, BAYER HEALTHCARE, LLC, WHICH, AGAIN, IS A DOMESTIC  
21 LIMITED LIABILITY COMPANY, IS SELLING ITS ENTIRE BAYER ANIMAL  
22 HEALTH OPERATION.

23           **THE COURT:**   OH.

24           **MR. OWEN:**   THEY'RE SELLING IT TO ANOTHER ANIMAL  
25 PHARMACEUTICAL COMPANY CALLED ELANCO. THE SALE'S BEEN WIDELY

1 DISCUSSED IN THE WALL STREET JOURNAL AND OTHER PLACES, AND IT  
2 IS DUE TO CLOSE NEXT SUMMER.

3 WE DON'T KNOW THE TERMS OF IT, OF COURSE. WE HAVEN'T  
4 SEEN IT. BUT IT WOULD BE A DISASTER FOR US IF WE GOT A  
5 JUDGMENT AGAINST A COMPANY THAT TURNED OUT TO BE AN EMPTY SHELL  
6 OVER HERE AND WE HAD NOT ACQUIRED JURISDICTION OVER THE GERMAN  
7 PARENT.

8 THERE IS ONE GERMAN PARENT, OVER 400 DIFFERENT BAYER  
9 CORPORATIONS. THAT'S BAYER AG, ONE GERMAN PARENT. AND, OF  
10 COURSE, WE DON'T KNOW HOW THE MONEY FLOWS OR WHO OWNS WHAT  
11 ASSETS.

12 SO FOR NOT ONLY DISCOVERY'S SAKE, BUT FOR THE  
13 SATISFACTION OF JUDGMENT SAKE, WE'RE PROCEEDING WITH THE  
14 SERVICE OF THE GERMAN DEFENDANT.

15 MY COLLEAGUE, MR. ASIMOW, HAS GENEROUSLY OFFERED TO  
16 GIVE ASSURANCES THAT THERE WILL BE SOLVENT DEFENDANTS IN THIS  
17 COUNTRY AGAINST WHICH ANY JUDGMENT COULD BE SATISFIED; HOWEVER,  
18 IT'S A LITTLE MORE COMPLICATED TO COME TO SOME AGREEMENT ON  
19 DISCOVERY.

20 SO BECAUSE (INDISCERNIBLE) INVOLVED, WE WENT AHEAD  
21 AND SERVED THEM, BUT WE'RE CERTAINLY OPEN TO LEAVING THEM OUT  
22 OF THIS CASE IF THOSE TWO IMPERATIVES CAN BE SATISFIED.

23 **THE COURT:** ALL RIGHT. MR. ASIMOV.

24 **MR. ASIMOW:** I APOLOGIZE FOR THE COUGH, YOUR HONOR.

25 **THE COURT:** IT'S OKAY.

1           **MR. ASIMOW:** I THINK MR. OWEN'S SUMMARY OF WHERE WE  
2 STAND IS LARGELY ACCURATE. TWO FOREIGN ENTITIES HAVE NOT BEEN  
3 SERVED.

4           MY INSTRUCTIONS ARE THAT IF THEY ARE SERVED, I AM TO  
5 MOVE TO DISMISS FOR LACK OF PERSONAL JURISDICTION BECAUSE THEY  
6 DON'T DO BUSINESS IN THE UNITED STATES. AND, OF COURSE, I'M  
7 ONLY APPEARING TODAY FOR THE DOMESTIC ENTITY THAT HAS BEEN  
8 SERVED.

9           **THE COURT:** RIGHT.

10          **MR. ASIMOW:** I WOULD LIKE TO SAVE US ALL THE TROUBLE  
11 OF THOSE MOTIONS, SO I'M CERTAINLY OPEN TO REACHING SOME TYPE  
12 OF ACCOMMODATION WITH MR. OWEN ABOUT THESE TWO CONCERNS THAT WE  
13 HAVE RAISED WITH RESPECT TO THE ABILITY OF BAYER HEALTHCARE LLC  
14 TO SATISFY A JUDGMENT. IT IS EASILY A MULTI-BILLION DOLLAR  
15 INDUSTRY WHICH, AS I UNDERSTAND IT, ESSENTIALLY ALL OF BAYER  
16 U.S. BUSINESS FLOWS.

17          SO I DON'T THINK THAT'S A CONCERN.

18          **THE COURT:** SO THE PROPOSED SALE IS NOT OF BAYER  
19 HEALTHCARE, LLC, BUT ONLY A PARTICULAR DIVISION WITHIN IT?

20          **MR. ASIMOW:** ITS ASSETS, AS I UNDERSTAND IT. I DON'T  
21 KNOW HOW IT WILL LINE UP WITH PARTICULAR CORPORATE ENTITIES,  
22 BUT IT'S THE ANIMAL HEALTH BUSINESS. THERE IS AN AGREEMENT TO  
23 SELL THAT TO A COMPANY CALLED ELANCO, E-L-A-N-C-O, AND WE DON'T  
24 KNOW WHEN THAT -- I THINK THE ESTIMATES ARE THAT WILL BE  
25 SOMETIME IN THE MIDDLE OF NEXT YEAR BUT IT'S UNDER REVIEW BY

1 (INDISCERNIBLE) AUTHORITIES, SO WE DON'T KNOW WHEN THAT WILL  
2 HAPPEN.

3 **THE COURT:** OKAY.

4 WELL, IT'S INTERESTING, THOUGH. MR. OWEN SUGGESTS  
5 THAT DISCOVERY ISSUES ARE MORE THORNY FOR WORKING OUT THAN THIS  
6 ISSUE OF -- I WOULD HAVE EXPECTED THE OTHER WAY AROUND. I  
7 DON'T -- YOU KNOW, WE CAN DIVE INTO THOSE COMPLICATED PERSONAL  
8 JURISDICTION ISSUES WHICH WILL INEVITABLY CAUSE MR. OWEN TO ASK  
9 FOR JURISDICTIONAL DISCOVERY.

10 IN FACT, I WOULD HOPE THAT IF THOSE FOREIGN ENTITIES  
11 ARE SERVED AND IN YOUR CONVERSATIONS IT APPEARS CLEAR THAT  
12 DISCOVERY WILL BE NEEDED, THAT YOU TRY TO WORK OUT A DISCOVERY  
13 PLAN IN ADVANCE OF THE FIRST MOTION, BECAUSE YOU'LL SPEND A  
14 YEAR TRYING TO WORK OUT PERSONAL JURISDICTION BY THE TIME I  
15 HEAR A MOTION AND GET OUT AN ORDER, AND THEN YOU START THE  
16 DISCOVERY, AND THEN I HEAR A SECOND MOTION. SO I'M GOING TO  
17 SUGGEST IN A CASE LIKE THIS PERHAPS WE CAN DO IT ONCE.

18 OBVIOUSLY WHEN THE OPENING BRIEF IS FILED, MR. OWEN  
19 MAY REALIZE HE NEEDS SOME ADDITIONAL DISCOVERY, AND I WOULD  
20 AGAIN URGE YOU TO WORK THAT OUT AND EXTEND THE BRIEFING  
21 SCHEDULE.

22 THERE ARE LOTS OF THINGS WE CAN DO TO MAKE IT MORE  
23 EFFICIENT WITHOUT ANYONE GIVING UP ANY OF THEIR RIGHTS TO HAVE  
24 THE MATTER HEARD. IF THERE'S A -- IF YOUR CLIENT COMPLETELY --  
25 IS COMPLETELY OPPOSED TO JURISDICTIONAL DISCOVERY, THAT'S

1 ANOTHER MATTER. BUT WE CAN PROBABLY HANDLE THAT IN FURTHER  
2 CASE MANAGEMENT CONFERENCE AND DECIDE WHETHER WE REALLY NEED A  
3 MOTION ON THAT OR NOT. IT'S A SUGGESTION, AND WE MAY BE A LONG  
4 WAY FROM THERE. I'M NOT SURE.

5 **MR. ASIMOW:** I THINK WE PROBABLY ARE A WAYS FROM  
6 THAT. THE MOTION TO DISMISS WE FILED AS A SUBSTANTIVE MOTION.

7 **THE COURT:** SURE.

8 **MR. ASIMOW:** (INDISCERNIBLE) IF THAT WERE GRANTED,  
9 THE LOGIC OF IT WOULD APPLY TO OTHER DEFENDANTS --

10 **THE COURT:** OF COURSE.

11 **MR. ASIMOW:** -- AND THAT WOULD WRAP UP THE CASE.  
12 WHAT I'VE SUGGESTED IS THAT IF PLAINTIFF IS ABLE TO PERFECT  
13 SERVICE, I ALSO DON'T KNOW HOW LONG THAT WILL TAKE --

14 **THE COURT:** IT TAKES A LONG TIME.

15 (SIMULTANEOUS COLLOQUY.)

16 **MR. ASIMOW:** (INDISCERNIBLE) TAKEN A LONG TIME SO  
17 FAR, IS WE PROVIDE AN OPEN-ENDED EXTENSION FOR THE FOREIGN  
18 ENTITIES TO ANSWER --

19 **THE COURT:** OKAY.

20 **MR. ASIMOW:** -- SO WE CAN SEE WHERE WE ARE ON THE  
21 MOTION TO DISMISS, TO SEE IF WE CAN HAVE A CASE HERE THAT IS --

22 **THE COURT:** ALL RIGHT.

23 **MR. ASIMOW:** -- GOING TO PROCEED TO MERITS DISCOVERY.

24 **THE COURT:** OKAY. THAT MAKES SENSE. I CONTINUE TO  
25 BE FRUSTRATED WITH THE DIFFICULTIES IN PERFECTING INTERNATIONAL



1 SERVICE. AND WE'RE TALKING ABOUT GERMANY. WE'RE NOT TALKING  
2 ABOUT THE COUNTRIES THAT THE U.S. DOESN'T HAVE DIPLOMATIC  
3 RELATIONSHIPS WITH. BUT THIS STORY IS WHAT I HEAR OVER AND  
4 OVER, AND I'M SURE FOR YOU, YOU HAVE TO DEAL WITH IT SO MUCH  
5 MORE.

6 BUT WE'LL JUST HAVE TO WAIT. THERE'S NO LIMITATION  
7 ON -- THERE'S NO TIME LIMIT ON -- UNDER RULE FOUR FOR THE  
8 INTERNATIONAL SERVICE, SO WE HAVE NO PROBLEM THERE. BUT WE'LL  
9 JUST HAVE TO SEE WHAT -- WHAT WE HAVE.

10 LET'S -- OKAY. SO I THINK I UNDERSTAND THAT. I  
11 APPRECIATE THAT.

12 THERE IS A REQUEST FOR A DISCOVERY STAY PENDING THE  
13 MOTION TO DISMISS. I TYPICALLY WOULD NOT DO THAT. I ONLY  
14 LOOKED AT THE MOTION AT THE VERY HIGHEST LEVEL. AND AS IS  
15 TYPICAL WITH CASES LIKE THIS, THE MOST -- THE MOST YOU COULD  
16 EXPECT, MR. ASIMOW, IS MY GIVING LEAVE TO AMEND AT LEAST ONCE.  
17 IN THE NINTH CIRCUIT I THINK IT'S NOT FAVORED. I'M NOT EVEN  
18 SUGGESTING THERE'S ANYTHING WRONG WITH THE COMPLAINT, BUT THE  
19 CASE WON'T BE OVER. I CAN'T IMAGINE SOMETHING THAT IS NOT  
20 AMENABLE TO AT LEAST ONE TRY. SO WE'VE GOT A LONG ROAD AHEAD  
21 OF US JUST GETTING THE PLEADINGS SQUARED AWAY. SO A DISCOVERY  
22 STAY IS -- COULD GO ON FOR AN AWFULLY LONG TIME.

23 IS THIS MOTION FULLY BRIEFED?

24 **MR. ASIMOW:** YES, IT IS, YOUR HONOR.

25 **THE COURT:** OKAY, OKAY. AND IT'S NOT -- IT'S SET FOR

1 FEBRUARY 27. IT'S REALLY QUITE A WAYS OUT.

2 MR. OWEN, YOUR VIEW ON THE REQUEST FOR DISCOVERY  
3 STAY?

4 **MR. OWEN:** I'M SORRY, YOUR HONOR?

5 **THE COURT:** YOUR VIEW ON A REQUEST FOR DISCOVERY  
6 STAY.

7 **MR. OWEN:** YEAH, MAY I SPEAK TO THAT FOR JUST A  
8 MOMENT.

9 **THE COURT:** YES, PLEASE.

10 **MR. OWEN:** THE REQUEST FOR A DISCOVERY STAY NEEDS TO  
11 BE TAKEN INTO CONTEXT OF WHAT THIS CASE IS NOT. IT'S NOT A  
12 CLASS ACTION. IT'S A COMPETITOR ACTION WITH JUST TWO PARTIES.  
13 IT INVOLVES A VERY LIMITED PERIOD OF TIME. AS YOU'LL SEE IN  
14 THE COMPLAINT, TEVRA ONLY CAME INTO EXISTENCE IN 2016, REALLY,  
15 AND ONLY STARTED REALLY WORKING, DOING BUSINESS IN 2017. SO  
16 LIMITED PERIOD OF TIME.

17 WE'RE A SMALL COMPANY. WE'RE 14 PEOPLE. WE'RE NOT  
18 TALKING ABOUT A LOT OF DISCOVERY ON OUR PART.

19 AND THE SUBJECT MATTER IS VERY LIMITED -- IT IS ONE  
20 DRUG CALLED IMIDACLOPRIN -- IMIDACLOPRID. EVEN I'M STILL  
21 MISPRONOUNCING IT.

22 **THE COURT:** I DIDN'T EVEN TRY.

23 **MR. OWEN:** IT'S ONE DRUG. AND THE BURDENS OF  
24 DISCOVERY IN THIS CASE ARE ABSOLUTELY NOTHING LIKE THEY WOULD  
25 BE IN A CLASS ACTION CASE.

1 THE BIGGEST -- THE BIGGEST THING I WOULD URGE THE  
2 COURT TO DO REGARDING THE DISCOVERY STAY IS GIVE THIS CASE THE  
3 SMELL TEST. IS -- DOES THIS LOOK LIKE A "THROW IT AT THE WALL  
4 AND SEE IF IT STICKS" KIND OF CASE; DO THE LITIGANTS HERE AND  
5 THEIR COUNSEL SEEM LIKE THEY'RE INVOLVED IN KIND OF A BOTTOM  
6 FEEDER, LET'S JUST GET SOMETHING ON FILE AND SETTLE IT. IT'S  
7 NOT THAT WAY.

8 IT'S A CLASSIC GENERIC VERSUS NAME BRAND WHERE THE  
9 NAME BRAND HAS AN INCENTIVE TO KEEP THE GENERIC OUT OF THE  
10 MARKET. AND WE'VE GONE INTO UNUSUAL DETAIL -- SOME WOULD SAY  
11 TOO MUCH DETAIL -- IN THE COMPLAINT.

12 WE'VE GIVEN THE COURT THINGS LIKE TABLES OF PRICES TO  
13 DEMONSTRATE THE VIABILITY OF OUR MARKET DEFINITIONS. WE'VE  
14 GIVEN THE COURT A VERY UNUSUALLY DETAILED LIST OF CALCULATION  
15 OF OUR DAMAGES SHOWING PROJECTIONS IN DIFFERENT MARKET. ONE,  
16 FIPRONIL, WHERE OUR PROJECTIONS WERE VERY ACCURATE, AND THE  
17 OTHER IMIDACLOPRID THEY WERE VERY INACCURATE. WE BELIEVE THE  
18 DIFFERENCE IS THIS ILLEGAL REPEAT PROGRAM. SO WE'VE GONE INTO  
19 GREAT DETAIL.

20 IF YOU GIVE THIS THE SMELL TEST THAT IT IS NOT KIND  
21 OF CASE THAT HAS JUST BEEN THROWN AGAINST WALL, AND THE ABILITY  
22 TO GO FORWARD WITH DISCOVERY BEGINNING NOW, AT LEAST WRITTEN  
23 DISCOVERY, AT LEAST LET'S GET A ROUND OF WRITTEN DISCOVERY  
24 REQUESTS OUT, WILL EXPEDITE THE ULTIMATE CONCLUSION IN THIS  
25 CASE.

1 WE'D ALSO ASK THE COURT TO CONSIDER THIS. SOME CASES  
2 ARE DISMISSED WITH PREJUDICE ON THE FIRST GO ROUND. AGAIN, IF  
3 YOU APPLY THE SMELL TEST, THIS SHOULDN'T BE ONE OF THEM. EVEN  
4 IF THERE WAS A DISMISSAL -- I'VE BEEN INVOLVED IN A NUMBER OF  
5 CASES IN FRONT OF JUDGE ILLSTON, IN FRONT OF JUDGE GONZALEZ  
6 ROGERS, IN THE CRT CASE THAT'S NOW WITH JUDGE TIGAR, ALL OF  
7 THOSE CASES WERE DISMISSED WITH LEAVE TO AMEND, AND YET  
8 DISCOVERY WENT FORWARD.

9 **THE COURT:** YEAH.

10 **MR. OWEN:** SO THE RISKS OF DAMAGE TO PARTIES OF  
11 UNNECESSARY EXPENSE ARE VERY SMALL, AND WE WOULD ASK THAT  
12 DISCOVERY PROCEEDS AT THIS TIME.

13 DO YOU HAVE ANY QUESTIONS FOR ME, YOUR HONOR?

14 **THE COURT:** THANK YOU.

15 **MR. ASIMOW,** DID YOU WANT TO ADD ANYTHING?

16 **MR. ASIMOW:** JUST A FEW COMMENTS ABOUT THAT, YOUR  
17 HONOR.

18 SO THIS IS AN EXCLUSIVE DEALING CASE. THE MOST  
19 CRITICAL ISSUE IN AN EXCLUSIVE DEALING CASE ARE THE EXCLUSIVE  
20 DEALING AGREEMENTS.

21 SO WE HAVE NOW PROVIDED TO PLAINTIFF AND TO THE COURT  
22 ALL OF OUR AGREEMENTS WITH WHAT WE BELIEVE ARE THE  
23 RELEVANT RETAIL -- I SAY WHAT WE BELIEVE BECAUSE THE RETAILERS  
24 ARE IDENTIFIED IN THE COMPLAINT BY THE LETTERS, SO THERE WAS  
25 SOME GUESS WORK AS TO WHO PLAINTIFF MEANT. BUT I THINK YOUR

1 HONOR GOT IT COMPLETELY RIGHT, OR CLOSE TO RIGHT.

2 SO THOSE DOCUMENTS ARE NOW AVAILABLE TO PLAINTIFF,  
3 AND THE MOST SALIENT -- THERE WAS A LOT OF INTEREST IN THEM,  
4 BUT TO ME WHAT IS DISPOSITIVE IS THAT THEY'RE ALL SHORT-TERM.

5 (SIMULTANEOUS COLLOQUY.)

6 **THE COURT:** I KNOW THAT'S IN YOUR MOTION, THAT  
7 THEY'RE SHORT-TERM.

8 **MR. ASIMOW:** I THINK THAT'S GOING TO CONTROL THIS  
9 CASE, REALLY, AND THERE ISN'T MUCH TO DO IN THE WAY OF  
10 DISCOVERY --

11 **THE COURT:** THAT'S INTERESTING.

12 (SIMULTANEOUS COLLOQUY.)

13 **MR. ASIMOW:** -- THAT'S GOING TO AFFECT THAT.

14 NOW, MR. OWEN IS AWARE I'VE BEEN ON THE OTHER SIDE OF  
15 THIS ISSUE --

16 **THE COURT:** YEAH.

17 **MR. ASIMOW:** -- AND CONFRONTED WITH AGREEMENTS LIKE  
18 THIS WITH SHORT-TERM OR EASY TERMINATION PROVISIONS AND I DON'T  
19 THINK PLAINTIFF HERE IS GOING TO BE ABLE TO STATE A CAUSE OF  
20 ACTION FOR EXCLUSIVE DEALING --

21 **THE COURT:** YEAH.

22 **MR. ASIMOW:** -- IN THE FACE OF THESE AGREEMENTS.

23 SO, YOU KNOW, WE'RE NOT OPPOSED TO SOME REASONABLE  
24 ACCOMMODATION ON DISCOVERY IF THERE ARE PARTICULAR THINGS THAT  
25 PLAINTIFF FEELS IT MAY NEED, PARTICULARLY IF WE WIND UP IN A

1 SITUATION WITH AN AMENDED COMPLAINT. BUT IT DOESN'T SEEM TO ME  
2 THAT WE SHOULD MOVE TO DEPOSITIONS OR TO ANY SUBSTANTIAL  
3 DISCOVERY DOCUMENT PRODUCTION --

4 **THE COURT:** YEAH.

5 **MR. ASIMOW:** -- UNTIL WE HAVE A CHANCE TO SEE YOU ON  
6 THE MOTION TO DISMISS AND YOU'VE HAD A CHANCE TO SEE THE  
7 AGREEMENTS THAT WE'VE SUBMITTED --

8 **THE COURT:** YEAH.

9 (SIMULTANEOUS COLLOQUY.)

10 **MR. ASIMOW:** (INDISCERNIBLE) COURT CONSIDERING AT  
11 THIS TIME, BUT I THINK IT WILL BE (INDISCERNIBLE) TO LOOK AT  
12 THOSE WHEN CONSIDERING WHETHER LEAVE TO AMEND SHOULD BE  
13 GRANTED.

14 **THE COURT:** YEAH.

15 SO I -- I'M TRYING ACCOMMODATE YOUR REQUESTED TRIAL  
16 SCHEDULE, AND I ACTUALLY CAN COME PRETTY CLOSE, BUT THAT MEANS  
17 YOU HAVE TO GET STARTED. AND IF YOU WERE TO WAIT UNTIL MARCH  
18 OR APRIL WHEN I GET OUT MY ORDER, AND THEN IF I REQUIRE YOU TO  
19 AMEND, AND THEN IF THE FOREIGN PARTIES HAVEN'T BEEN SERVED,  
20 YOU'RE NOT GOING TO MAKE YOUR TRIAL DATE, AND IT'S A FIRM TRIAL  
21 DATE, BECAUSE I'M GIVING YOU WHAT YOU ASKED FOR. IT'S JUST  
22 FIRM.

23 AND SO, MR. ASIMOW, I -- I'M NOT INCLINED TO STAY THE  
24 DISCOVERY. THAT WOULD BE UNUSUAL TO DO THAT. I DON'T REALLY  
25 CONSIDER THERE TO BE A COMPELLING REASON HERE, AND I AM

1 CONCERNED ABOUT THIS PROCESS TAKING SO LONG. WE COULD STILL BE  
2 HERE IN A YEAR ON THE PLEADINGS, AND IF YOU HAVEN'T GOTTEN  
3 DISCOVERY STARTED, THEN, GIVEN YOUR TRIAL DATE, ANY SOONER THAN  
4 2023 IS GOING TO BE USELESS, AND I'M TRYING TO MOVE THIS CASE  
5 ALONG FOR YOU. AND I THINK TEVRA CERTAINLY NEEDS IT TO MOVE  
6 ALONG. THE PAIN IS NOW, AND WAITING THREE YEARS ISN'T GOING TO  
7 BE VERY HELPFUL.

8 SO I THINK THAT WHAT I'M GOING TO DO -- I AM GOING TO  
9 OPEN DISCOVERY FOR ALL WRITTEN DISCOVERY. AND, MR. OWEN,  
10 SHOULD YOU COME TO THE POINT WHERE YOU NEED A DEPOSITION AND  
11 MR. ASIMOW IS OPPOSED TO THAT BEFORE THE PLEADINGS ARE SET, I'M  
12 GOING TO RECOMMEND THAT YOU SEND ME -- TO ME, NOT TO THE  
13 MAGISTRATE JUDGE, WHO WILL GENERALLY HANDLE DISCOVERY DISPUTES,  
14 BUT THIS IS REALLY MORE THE CASE SCHEDULE.

15 ALL I WOULD LIKE YOU TO DO IS GIVE ME A JOINT  
16 STATEMENT THAT BRIEFLY OUTLINES YOUR POSITION. AND FOR  
17 MR. OWEN, IT WILL BE -- WELL, YOU MIGHT BE ASKING TO ALLOW ALL  
18 DEPOSITIONS TO GO FORWARD. IT'S MORE LIKELY THAT IN THAT  
19 WINDOW THERE WILL BE PARTICULAR ONES THAT YOU CAN BRIEFLY TELL  
20 ME THE RELEVANCE. AND THEN EITHER -- AND THEN I CAN GET YOU ON  
21 THE PHONE WITHIN A DAY OR TWO, AND WE CAN USUALLY WORK IT OUT.

22 IT'S NOT THE KIND OF THING THAT NEEDS MOTION  
23 PRACTICE, FRANKLY, BECAUSE YOU WILL HAVE GIVEN ME YOUR  
24 POSITION. WE CAN -- YOU CAN BE ON THE RECORD BY PHONE. I  
25 DON'T NEED THE TRAVEL. WE CAN WORK THAT OUT.

1 I THINK WE'RE MONTHS AWAY FROM WANTING ORAL  
2 DEPOSITIONS BECAUSE YOU NEED TO SEE THE DOCUMENTS. SO LET'S DO  
3 THAT. I THINK THAT -- I THINK THAT SHOULD BE SUFFICIENT.

4 ARE THERE OTHER ISSUES THAT YOU WANTED TO ADDRESS  
5 TODAY BEFORE I SET THE CASE SCHEDULE?

6 **MR. OWEN:** YES, YOUR HONOR, THERE'S ONE -- THERE'S A  
7 PROCEDURAL ISSUE THAT ARISES OUT OF THE FULLY BRIEFED MOTION TO  
8 DISMISS. THERE ARE TWO MOTIONS PENDING BEFORE YOUR HONOR RIGHT  
9 NOW, AND IT WOULD BE VERY HELPFUL IF THEY WERE RESOLVED BEFORE  
10 WE SEE YOU ON FEBRUARY 27TH.

11 **THE COURT:** WHAT ARE THOSE MOTIONS?

12 **MR. OWEN:** OKAY. THE FIRST IS THEIR REQUEST -- IS  
13 BAYER'S REQUEST FOR JUDICIAL NOTICE AND THE ACCOMPANYING  
14 REQUEST TO SEAL, BOTH OF WHICH WE'VE OPPOSED.

15 THE SECOND IS RELATED TO THAT, AND IT HAS TO DO WITH  
16 TEVRA'S OBJECTIONS TO BAYER'S REQUEST FOR JUDICIAL NOTICE,  
17 WHICH WE OBJECTED TO UNDER THE LOCAL RULE AS REQUIRING -- AS  
18 CONSTITUTING NEW DOCUMENTS IN A REPLY BRIEF.

19 SO WE ASKED FOR ALTERNATIVE RELIEF IN OUR OBJECTION  
20 TO THEIR NEW DOCUMENTS FILED IN CONJUNCTION WITH A REPLY, AND  
21 WE ASK THAT EITHER THE COURT, A, STRIKE THOSE DOCUMENTS AND NOT  
22 CONSIDER THEM IN CONJUNCTION WITH THE MOTION TO DISMISS, OR B,  
23 GRANT US THE RIGHT TO FILE A SURREPLY.

24 SO THAT BRIEFING, THE BRIEFING FOR YOUR FEBRUARY 27TH  
25 HEARING ON THE MOTION TO DISMISS, ISN'T REALLY COMPLETE UNLESS



1 THE COURT EITHER STRIKES THE DOCUMENTS AND THEN WE'RE DONE  
2 BRIEFING OR GRANTS US SOME -- THE ABILITY TO REPLY TO THEM. WE  
3 NEVER HAD ACCESS TO THEM WHEN WE WERE PREPARING OUR OPPOSITION.

4 NOW, OF COURSE, ALL OF THIS WRAPS AROUND THE LARGER  
5 ISSUE THAT WE BELIEVE THAT ANY TIME A -- AND WE FULLY BRIEFED  
6 THIS IN OUR OPPOSITION -- ANY TIME A DEFENDANT ATTACHES NEW  
7 DOCUMENTS TO A MOTION TO DISMISS BY RULE, BY RULE 12, THAT  
8 CONVERTS IT INTO A MOTION FOR SUMMARY JUDGMENT UNLESS THOSE  
9 DOCUMENTS ARE EXCLUDED BY THE COURT.

10 **THE COURT:** WELL, NO. IT ACTUALLY DOESN'T. BECAUSE  
11 IF I'M MERELY TAKING JUDICIAL NOTICE OF DOCUMENTS, IT'S -- I'M  
12 NOT TAKING -- I'M NOT CONSIDERING THEM FOR THE TRUTH OF THE  
13 ASSERTIONS IN THE DOCUMENTS, OR THEY ARE DOCUMENTS BEYOND  
14 DISPUTE.

15 SO I'M NOT CONVERTING THIS TO A SUMMARY JUDGMENT  
16 MOTION. THAT I CAN RULE ON RIGHT NOW. THAT'S NOT HAPPENING.

17 I HAVEN'T LOOKED AT THOSE DOCUMENTS YET. I SAW THAT  
18 THAT DISPUTE WAS LAID OUT IN YOUR OPPOSITION. I'M NOT -- AND  
19 IT'S NOT UNREASONABLE TO ASK FOR A SURREPLY IF I CONSIDER THE  
20 DOCUMENTS. I CERTAINLY UNDERSTAND THAT.

21 I THINK -- I'LL HAVE TO LOOK AT IT MORE CAREFULLY TO  
22 SEE THE NATURE OF THE DOCUMENTS THEMSELVES AND WHETHER THEY  
23 ACTUALLY DO OPEN UP NEW ISSUES. AND IF I WERE TO ALLOW A  
24 SURREPLY, IT WOULD BE MUCH BETTER FOR ME TO HAVE THAT IN HAND  
25 BEFORE THE ARGUMENT, SO I APPRECIATE THAT YOU RAISED THAT

1 ISSUE, AND I'M GLAD TO TAKE A LOOK AT THAT. AND A SURREPLY  
2 GENERALLY IS LEFT TO ABOUT THREE PAGES. SO THAT'S THE WAY IT  
3 GOES.

4 MR. ASIMOW, DID YOU WANT TO COMMENT?

5 MR. ASIMOW: I'D LIKE TO COMMENT ON IT  
6 (INDISCERNIBLE).

7 THE COURT: SURE.

8 MR. ASIMOW: WE WANTED TO SUBMIT THESE DOCUMENTS WITH  
9 OUR MOTION --

10 THE COURT: YEAH.

11 MR. ASIMOW: (INDISCERNIBLE) PROTECTIVE ORDER THEY'RE  
12 HIGHLY CONFIDENTIAL BECAUSE THERE ARE AGREEMENTS --

13 THE COURT: SURE.

14 MR. ASIMOW: -- WHICH CONTAIN PRICING, ET CETERA.  
15 COUNSEL DECLINED TO STIPULATE TO A PROTECTIVE ORDER  
16 SO WE ACTUALLY BROUGHT A MOTION FOR ONE. THAT WAS REFERRED TO  
17 THE MAGISTRATE JUDGE. HE ISSUED THE PROTECTIVE ORDER. AND  
18 THEN WE PUT THESE TOGETHER AND SUBMITTED THEM TO THE COURT.

19 SO IT WAS, OF COURSE, MY PREFERENCE TO PROVIDE THEM  
20 TO THE COURT AND OPPOSING COUNSEL WITH OUR MOTION.

21 UNDER THESE CIRCUMSTANCES, I'M NOT OPPOSED TO  
22 PLAINTIFF HAVING A BRIEF SURREPLY.

23 (SIMULTANEOUS COLLOQUY.)

24 THE COURT: WELL, MAYBE WE SHOULD JUST TAKE CARE OF  
25 IT RIGHT NOW THEN. WITH THAT IN MIND, LET ME -- I HAVE THE

1 BRIEFING HERE. I DON'T ACTUALLY HAVE THE COMPLAINT HERE.

2 MAYBE IT WAS -- LET'S SEE.

3 SO, MR. OWEN, IT SEEMS THEN I THINK YOU'VE DONE A  
4 GOOD JOB BY BRINGING THAT UP. IT SAVES ALL BY BRINGING THAT  
5 UP. IT SAVES ALL OF US THE TIME OF HAVING TO DO MORE ON IT.

6 I WILL ALLOW A SURREPLY, AND I WILL LIMIT YOU TO  
7 THREE PAGES. AND I -- YOU KNOW, YOU CERTAINLY DON'T NEED TURN  
8 IT IN TOMORROW. SO WHEN WOULD YOU -- IS IT REASONABLE FOR THAT  
9 TO BE FILED BY JANUARY 17?

10 **MR. OWEN:** BY WHAT DATE?

11 **THE COURT:** JANUARY 17.

12 **MR. OWEN:** JANUARY 17?

13 **THE COURT:** YEAH.

14 **MR. OWEN:** VERY REASONABLE.

15 **THE COURT:** WELL, I WOULD IMAGINE --

16 **MR. OWEN:** THESE CAN BE THE BEST THREE PAGES EVER  
17 WRITTEN BETWEEN NOW AND JANUARY 17.

18 **THE COURT:** I'M ACTUALLY THINKING ABOUT SOME  
19 ASSOCIATE BACK AT YOUR OFFICE WHO IS ALREADY UP TO HIS OR HER  
20 EYEBALLS WITH WORK UP TO THE HOLIDAY AND I BELIEVE THAT WHEN WE  
21 CAN --

22 **MR. OWEN:** THAT ASSOCIATE IS SITTING AT THE COUNSEL  
23 TABLE.

24 **THE COURT:** I'M HER NEW BEST FRIEND.

25 **MR. OWEN:** SHE THANKS YOU --

1           **THE COURT:**   YEAH.

2           **MR. OWEN:**   I CAN FEEL THE AURA OF HER THANKING THE  
3 COURT FOR THAT.

4           **THE COURT:**   I'M NOT GOING TO SEE YOU FOR ANOTHER  
5 MONTH, SO THERE'S NO REASON FOR ME TO INFLICT PAIN. I'M SURE  
6 I'LL DO THAT AT OTHER POINTS IN THE CASE. OKAY. I'LL LOOK  
7 FORWARD TO THAT. I'M GLAD WE COULD TAKE CARE OF THAT.

8                       NOW, WITH THAT ALL BEING SAID, I WAS LOOKING AT A  
9 TRIAL DATE FOR YOU. YOU WERE ASKING FOR AUGUST 23RD OF 2021.  
10 I CAN'T QUITE DO THAT, BUT I CAN SET THIS CASE FOR TRIAL ON  
11 SEPTEMBER 20 OF 2021.

12                      I WILL SET YOUR FINAL PRETRIAL CONFERENCE ON  
13 AUGUST 26TH OF 2021 AT 1:30 IN THE AFTERNOON. AND I'M GOING TO  
14 SET THE LAST DAY THAT I WILL HEAR SUMMARY JUDGMENT ON MAY 6TH  
15 OF 2021. I'LL EXPLAIN THAT TO YOU.

16                      MY CALENDAR IS SO IMPACTED THAT I ACTUALLY ASSIGN A  
17 HEARING DATE. IT'S THE ONLY TIME I RESERVE A HEARING DATE IN  
18 ADVANCE, BUT THAT'S THE LAST DAY FOR SUMMARY JUDGMENT. I -- I  
19 HAVE FOUND THAT EARLIER SUMMARY JUDGMENT MOTIONS ARE RARELY  
20 SUCCESSFUL, AND I ONLY ALLOW ONE IN THE LIFE OF THE CASE PER  
21 SIDE. SO OFTEN IT BEHOOVES THE PARTIES TO WAIT.

22                      THAT DATE IS RESERVED. THAT MEANS YOU CAN FILE  
23 OPENING MOTION 35 DAYS BEFORE THE HEARING IF YOU WANT, OR YOU  
24 CAN WORK OUT BETWEEN YOURSELVES A MOTION -- A MORE COMFORTABLE  
25 BRIEFING SCHEDULE, BUT I DON'T POLICE THAT.

1           WHEN YOU FILE MOTIONS, AS YOU LEARNED FROM THE MOTION  
2 TO DISMISS, IT TAKES MONTHS TO GET A HEARING DATE. SO I WANT  
3 TO BE SURE THAT THE SUMMARY JUDGMENT GIVES ME ENOUGH TIME AT  
4 THE END. THAT'S WHY I SET THAT UP.

5           I -- IN A CASE LIKE THIS, THERE WILL DEFINITELY BE  
6 EXPERTS, AND I NEED TO EXPLAIN TO YOU WHAT I DO WITH DAUBERTS  
7 BECAUSE IT'S SCHEDULING. I THINK IT'S IN MY STANDING ORDERS,  
8 BUT I WANT YOU TO BE THINKING ABOUT IT. IT'S A LITTLE  
9 COMPLICATED.

10           SO IF YOU HAVE DAUBERT MOTIONS FOR TRIAL -- AND I'M  
11 TALKING ABOUT TRIAL, NOT SUMMARY JUDGMENT -- YOU CAN FILE --  
12 YOU CAN FILE IT, BUT I WON'T RESERVE A HEARING DATE NOW. IT  
13 MUST BE -- YOU MUST SECURE A HEARING DATE AT LEAST 60 DAYS  
14 BEFORE TRIAL. IT TAKES ABOUT FIVE MONTHS FROM THE DAY YOU CALL  
15 TO RESERVE TO GET A HEARING DATE. SO, YOU KNOW, YOU'VE GOT TO  
16 BACK UP EVERYTHING.

17           NOW I GIVE YOU A FAILSAFE, A SAFETY NET ON THE  
18 DAUBERT. IF YOU MISS THAT DATE, YOU MAY USE YOUR IN LIMINE  
19 MOTIONS FOR DAUBERT, BUT THERE ARE FURTHER RESTRICTIONS. SO  
20 YOU'RE ONLY ALLOWED FIVE IN LIMINE MOTIONS AT THE FINAL  
21 PRETRIAL CONFERENCE. THOSE ARE LIMITED TO FIVE PAGES EACH AND  
22 ONLY ONE EXPERT PER IN LIMINE MOTION.

23           IF YOU FILE IT EARLIER, I LIMIT YOU TO 25 PAGES  
24 TOTAL, NO MORE THAN TEN PAGES PER EXPERT.

25           I'M SORRY THIS GOES ON FOREVER. IT'S THE ONLY WAY

1 I'VE BEEN ABLE TO BRING ORDER TO THESE DAUBERT MOTIONS, BECAUSE  
2 MOST OF THEM ARE UNSUCCESSFUL, AND IF I DON'T STREAMLINE IT,  
3 THEN WE GET STUCK IN A DAUBERT PROBLEM.

4 IF YOU ARE CHALLENGING THE ADMISSIBILITY OF EXPERT  
5 EVIDENCE IN A SUMMARY JUDGMENT MOTION, IT'S LIKE ANY OTHER  
6 EVIDENCE OBJECTION UNDER OUR LOCAL RULE, AND THE DAUBERT  
7 OBJECTION HAS TO BE WITHIN YOUR 25 PAGES.

8 YOU'RE WELCOME TO FILE A SEPARATE DAUBERT MOTION.  
9 I'LL DECIDE IT BEFORE TRIAL. I WILL NOT CONSIDER IT EVEN IF  
10 YOU SECURE A HEARING DATE THAT IS THE SAME, I WILL NOT, BECAUSE  
11 OUR LOCAL RULE REQUIRES EVIDENCE OBJECTIONS PERTAINING TO  
12 SUMMARY JUDGMENT TO BE WITHIN THE 25-PAGE LIMIT.

13 SO --

14 **MR. ASIMOW:** DO YOU HAVE A PREFERENCE AS TO WHETHER  
15 IT'S ONE DOCUMENT AS OPPOSED TO YOUR 20-PAGE?

16 (SIMULTANEOUS COLLOQUY.)

17 **THE COURT:** I PREFER IT AT ONE.

18 **MR. ASIMOW:** OKAY.

19 **THE COURT:** I GIVE YOU THE PAGE LIMIT, 25 TOTAL, 10  
20 PER EXPERT. ONE IS EASIER FOR ME.

21 IN TERMS OF DISCOVERY DISPUTES, THEY WILL GO TO THE  
22 MAGISTRATE JUDGE ASSIGNED TO THE CASE. YOU PROBABLY ARE  
23 FAMILIAR WITH THAT. SCHEDULING ISSUES, WHICH SOMETIMES ARE  
24 COUSINS TO DISCOVERY DISPUTES WILL COME TO ME, AND THE  
25 MAGISTRATE JUDGE WILL KNOW THE LINE BETWEEN THOSE IF YOU CAN'T

1     QUITE TELL, AND THEN IT WILL JUST COME OVER TO ME. BUT THAT  
2     SHOULD MOVE THINGS ALONG PRETTY WELL.

3             PLEASE READ MY STANDING ORDERS. I'M GOING TO TELL  
4     YOU ABOUT FOOTNOTES. THIS IS MY TIME. I DON'T LIKE FOOTNOTES.  
5     I GENERALLY DON'T READ THEM, BUT IF YOU -- IF YOU MUST USE  
6     FOOTNOTES, YOU SHOULD USE THEM SPARINGLY, AND THEY MUST BE  
7     12-POINT FONT AND DOUBLE SPACED, AND IF THEY'RE NOT, THEY WILL  
8     BE STRICKEN AUTOMATICALLY, AND I'VE STOPPED GIVING LAWYERS THE  
9     OPPORTUNITY TO REFILE THE BRIEF BECAUSE IT'S TOO MUCH WORK ON  
10    OUR PART.

11            SO, KEEP THAT IN MIND. AND, YOU KNOW, IF ANYTHING  
12    WAS DONE IN THESE MOTIONS THAT DIDN'T COMPLY WITH THAT, I DON'T  
13    EVEN KNOW THAT THE CASE WAS MY CASE -- IT LOOKS LIKE  
14    EVERYTHING'S FINE, BUT --

15            **MR. ASIMOW:** WORD PROCESSING (INDISCERNIBLE.)

16            **MR. OWEN:** AND WE'VE GOT A BAD ONE ON PAGE 4 OF  
17    OUR OPPOSITION.

18            **THE COURT:** AND I'M NOT -- BUT THIS -- YOU KNOW, I'M  
19    NOT -- AND IT'S FINE. WE HAVEN'T -- YOU HAVEN'T BEEN IN. I  
20    HADN'T TALKED TO YOU ABOUT IT. IT'S NOT A PROBLEM. I'LL READ  
21    IT; I PROMISE. BUT NO -- WE'VE TALKED ABOUT IT.

22            WHAT I'D LIKE YOU TO DO, MEET AND CONFER AND WORK OUT  
23    THE REMAINDER OF THE CASE SCHEDULE, WHICH IS YOUR DISCOVERY  
24    CUTOFF DATES CONSISTENT WITH THE DATES I'VE GIVEN YOU. AND  
25    I'LL ALSO USE THAT JANUARY 17 DATE. IF YOU'D SUBMIT A

1 STIPULATION AND ORDER ON THAT, THAT WILL BE HELPFUL.

2 I THINK THAT TAKES CARE OF EVERYTHING WE NEED TO TALK  
3 ABOUT TODAY IN TERMS OF MY PART OF THE SCHEDULING. ANYTHING  
4 ELSE?

5 **UNIDENTIFIED SPEAKER:** NOTHING BY (INDISCERNIBLE)  
6 YOUR HONOR.

7 (SIMULTANEOUS COLLOQUY.)

8 **THE COURT:** ALL RIGHT. I DON'T SET REGULAR CASE  
9 MANAGEMENT CONFERENCES, ESPECIALLY WITH THE TRAVEL REQUIRED OR  
10 THE PHONE CALL, WHICH IS NOT AS EFFECTIVE.

11 WHAT I'D RATHER DO IS TO LET YOU INFORM ME WHEN  
12 ISSUES ARISE. AND, AGAIN, IT'S JUST THAT SIMPLE PROCESS. GIVE  
13 ME A JOINT STATEMENT, TELL ME WHAT THE ISSUE IS, AND ASK FOR A  
14 CASE MANAGEMENT CONFERENCE, AND I WILL GET YOU ON THE PHONE IN  
15 A COUPLE OF DAYS.

16 AT THAT POINT WE'LL DECIDE WHETHER WE CAN RESOLVE IT  
17 AS CASE MANAGEMENT OR WHETHER IT'S ACTUALLY A MOTION AND IT  
18 NEEDS TO BE FILED AS A MOTION, BUT AT LEAST I CAN GIVE YOU THAT  
19 ANSWER VERY QUICKLY AND MOVE THINGS ALONG.

20 AND REALLY DON'T HESITATE. I'VE NEVER HAD LAWYERS  
21 ABUSE THAT OPPORTUNITY. YOU'RE BUSY. YOU DON'T NEED TO BE  
22 TALKING TO ME. YOU CAN USUALLY WORK THINGS OUT YOURSELVES.

23 SO I THINK THAT'S EVERYTHING FROM MY END. I LOOK  
24 FORWARD TO SEEING YOU IN FEBRUARY, AND I'LL HAVE PLENTY OF TIME  
25 TO READ THE SURREPLY. ALL RIGHT? THANK YOU.



1                   **MR. ASIMOW:**   SEE YOU IN FEBRUARY, YOUR HONOR.

2                   **THE COURT:**   THAT'S GREAT.   THANK YOU, MR. ASIMOW.

3                   (PROCEEDINGS ADJOURNED AT 2:13 P.M.)

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CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT  
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF  
THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE  
U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE  
PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE  
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,  
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN  
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT  
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE  
ACTION.



JOAN MARIE COLUMBINI

DECEMBER 12, 2019